BOMBAY HIGH COURT

Maruti Mahipati Mullick

Vs

Polson Limited

(Tarkunde and Chitale, JJ.)

11.01.1969

JUDGMENT

Tarkunde, J.

1. The first petitioner is an employee of the first respondent M/a, Poison Ltd. He is working in the Coffee factory run by the first respondent. In June 1959, a trade union representing the workmen in the Coffee factory raised certain demands, including demands for pay scales and dear-ness allowance. The demands were admitted in conciliation under Section 12 of the Industrial Disputes Act, 1917. In the course of conciliation proceedings a settlement was reached between the first respondent and the Union on 4th March I960. Under the settlement the lowest wage scale was Rs. 36-2-60 for mazdoors of different categories. As regards dearness allowance, the settlement provided that all workmen shall be paid dearness allowance at the revised scale as was then available to the operatives in the cotton textile industry in Bombay city. It was provided that the settlement was to remain in force till 31st December 1962.

2. On 31st October 1964 the first petitioner, who was then working as a mazdoor in the coffee factory and was receiving basic wages of Rs. 40 per month and dearness allowance under the settlement, was retrenched by the first respondent along with fourteen other workmen. Shortly afterwards, on 26th November 1964, the first petitioner and the other fourteen retrenched workmen were re-engaged as casual workers in the coffee factory of the first respondent. After re-employment, they were paid wages at a consolidated rate of Rs. 2.75 per day, which was much less than the amount of basic wage and dearness allowance which a mazdoor was entitled to receive under the settlement. The first petitioner and the fourteen other workmen filed applications on 11th January 1965 before the Authority under the Payment of Wages Act (respondent No. 2) alleging that illegal deductions were made in their wages for the period between 26th November 1964 and 5th December 1964. They claimed that they were entitled to the wages drawn by them at the time of retrenchment or, in the alternative, to the lowest wage

with dearness allowance which a mazdoor was entitled to receive under the settlement.

3. In their defence the first respondent raised two contentions. The first respondent contended, in the first place, that the Authority had no jurisdiction to deal with the applications as the parties were at variance in regard to the contract of employment which determined the workmen's conditions of service. It was pointed out that while the workmen relied on the said settlement, the first respondent relied on an oral contract, entered into at the time of the re-engagement of the workmen, under which the latter were to receive a consolidated daily wage of Rs. 2.75. The second contention of the first respondent was that the workmen were engaged as daily-rated casual workers, that they could not ask the Authority to put them in the class of monthly-rated workers and that the Authority, therefore, had no jurisdiction to allow them wages which were available to monthly-rated mazdoors under the settlement. ,

4. The learned Authority consolidated the fifteen applications and heard the parties on the preliminary issue whether the Authority had jurisdiction to entertain the applications. The Authority found that he had no such jurisdiction and dismissed the fifteen applications. The legality of this order is challenged before us in this petition under Articles 226 and 227 of the Constitution.

5. In holding that he had no jurisdiction to entertain the applications, the learned Authority accepted both the contentions which were raised on behalf of the first respondent. The Authority also based its conclusion 011 an additional ground which was not taken by the first respondent in its written statement. The additional ground was that the settlement on which the workmen relied was to remain in force till 31st December 1962, that the claim of the workmen was in respect of a subsequent period (26th November 1964 to 5th December 1964), and that the claim could not be granted as the settlement was no longer binding on the parties.

6. We are satisfied that the Authority was in error in holding that the settlement ceased to be operative after 31st December 1962. Sub-section (2) of Section 19 of the Industrial Disputes Act, 1947, lays down that, the settlement shall be binding for such period as is agreed upon by the parties... and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

It was not alleged by the first respondent that after 31st December 1962 either party to the settlement had given to the other party a notice of its intention to terminate the settlement. Even if a notice of its intention to terminate the settlement was given by either party, the settlement did not automatically cease to be operative on the expiry of two months from the date of the notice.

The legal position is that the terms of a settlement continue to govern the relations between the parties after the notice of termination and the expiry of two months thereafter, until the settlement is replaced by a valid contract or award between the parties. This was laid down by the Supreme Court in *South Indian Bank v. Chacko*[1] while dealing with the binding effect of ah award under the provisions contained in Sub-section (6) of Section 19 of the Industrial Disputes Act. The Authority in the present ease was, therefore, not justified in rejecting the workmen's application on the ground that the settlement on which the workmen relied had ceased to be operative.

7. The Authority was also not justified in rejecting the workmen's application on the ground that their claim was in effect a claim to remove them from the category of daily-rated wage earners and place them in the category of monthly-rated wage earners. The workmen did not ask the Authority to shift them from one category to the other. Their claim was based on Clause (cl} of Sub-section (5) of Section 18 of the Industrial Disputes Act, which provides that where a settlement is arrived at in the course of conciliation of proceedings, it applies not only to all persons who were employed in the establishment or part of the establishment to which the dispute related, but also to "all persons who subsequently become employed in that establishment or part." As noticed earlier, the lowest category of workmen for whom wage scales were fixed by the settlement were mazdoors and the scale fixed for them was Rs. 36-2-60. They were also entitled to dearness allowance on the scale then available to the operatives in the cotton textile industry in Bombay city. The case of the first petitioner and the other workmen who applied to the Authority was that, although they were employed as casual daily-rated workmen, they were entitled to a basic wage calculated by dividing by 26 the monthly scale fixed by the settlement, with the addition of dearness allowance provided therein. According to the workmen, the first respondent was not entitled to evade the terms of the settlement by merely adopting the device of re-engaging workmen as casual daily-rated employees. Whether employees were daily-rated or monthly-rated was a matter relating to fixation of wage period, which is provided for under Section 4 of the Payment of "Wages Act and has no direct relation to the quantum of wages payable to employees. The dearness allowance available to the operatives in the Bombay textile industry, which has been granted to the employees of the first respondent under the settlement, has been fixed on a daily basis, but is available to monthly-rated as well as daily-rated workmen. Thus the claim of the workmen in the present case did not depend on their being shifted from the category of daily-rated workmen to that of monthly-rated workmen.

8. In rejecting the workmen's applications on the above ground the Authority relied on a decision of the Supreme Court in D 'Costa v. Patel The workman in that case was a carpenter employed by a railway administration. He was a daily-rated casual labourer. Subsequently the railway administration created a cadre of skilled labourers on a scale of monthly rates of pay and admitted to the cadre only those workmen who had passed a certain test. The workman in that

case did not pass that test and yet he applied to the Authority under the Payment of Wages Act for the recovery of wages at the scale available to the skilled labourers. The majority of the Supreme Court held that the Authority under the Payment of Wages Act had no jurisdiction to decide such a claim. In the course of its judgment, the majority of the Court observed that the Authority under the Payment of Wages Act had jurisdiction to decide what the actual wages were but that it had no jurisdiction to determine the question of "potential wages". It was observed in the majority judgment (p. 745) :...The question is, has the Authority the power to direct the appellant or his superior officers who may have been responsible of the classification, to revise the classification so as to upgrade him from the category of a daily wage earner to that of an employes on the monthly wages scheme...

9. As the Authority was not empowered to give such a direction, it was held that the Authority could not allow wages to the workmen on the basis of his being entitled to be upgraded and placed in the category of monthly-rated skilled workers. This decision has no application to the present case because the first petitioner and the other workmen do not ask to be upgraded into any category, but claim that they, as casual daily-rated labourers, are entitled to the wages which are payable to mazdoors under the settlement.

10. The last ground on which the Authority held that it had no jurisdiction to entertain the applications of the first petitioner and the other workmen was that there was a variance between the contract pleaded by the workmen and the contract relied upon by the first respondent and that the Authority under the Payment of Wages Act had no jurisdiction to decide which contract governed the rights of the parties. This view of the Authority was based on the well-known decision of Chagla C.J. and Dixit J. in Anthony Aimeda v. Taylor . Almeda and the other applicants in that case were employees of the Indian Naval dockyard. They claimed wages under a certain Ordinance, whereas their employer alleged that their wages were payable under a subsequent contract. The Court held that the Authority under the Payment of Wages Act had no jurisdiction to decide which of the two contracts subsisted between the parties. Chagla C.J. speaking for the Division Bench said (p. 901) :.What the Authority is now asked to decide is not what is the contract between the employer and the employee but which is the contract which regulates the terms of employment between the parties. In our opinion, the jurisdiction of the Authority is limited to decide what is contract in the sense of construing the contract in order to determine the liability of the employer to pay wages. But when the employer and the employee come before him and rely on different contracts, it is not within his jurisdiction to decide which of the two contracts holds the field, which of them is subsisting and under which of them the employer is liable to pay wages....The reason in support of this conclusion is given earlier in the judgment. The learned Chief Justice observes (p. 901) ...In order to decide this question (regarding the extent of the Authority's jurisdiction) we have carefully to bear in mind the nature

of the jurisdiction that the Authority under the Payment of Wages Act exercises. He constitutes a Court or a Tribunal of summary jurisdiction and the clear object of the Legislature in setting up this Court or Tribunal was to give facilities to the employee to recover his wages as expeditiously as possible, ...Therefore, it could never have been the object of the Legislature that the Authority under the Payment of Wages Act should try and decide complicated questions which should ordinarily and normally be heard by a civil Court...Towards the conclusion of the judgment, the learned Chief Justice said (p. 902) : We wish to make it clear that in coming to this conclusion we do not for a moment suggest that the employees are without a remedy. Our decision merely amounts to this that this particular summary remedy given to the workmen under the Payment of Wages Act is denied to them in view of the issue that arises for determination. It is always open to the workmen to go to the civil Court and litigate this question...

11. With the greatest respect, the decision in Almeda's case appears to us to have been very unfortunate. The principle on which it was based was not derived from any of the provisions of the Payment of Wages Act, and its practical application led to a number of difficulties. It was assumed in Almeda's case that the Authority tinder the Payment of Wages Act was a Tribunal of "summary jurisdiction" and it was held on that basis that the Legislature did not intend that the Authority should try and decide "complicated" questions which should normally be heard by a civil Court. There is, however, no provision in the Payment of Wages Act which grants summary powers of decision to the Authority. On the contrary, the jurisdiction of the Authority, although limited in extent, is exclusive. Sub-section (7) of Section 15 of the Payment of Wages Act, as the sub-section stood at the time of Aimcda's case, conferred jurisdiction on the Authority "to hear and decide for any specified area all claims arising- out of deductions from the wages, or delay in payment of wages, of persons employed or paid in that area." Clause (d) of Section 22 lays down that no Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed " could have been recovered by an application under Section 15.". Thus the scheme of the Payment of Wages Act is that "all" claims arising out of deductions from wages or delay in the payment of wages are to be decided by the Authority and not by a civil Court. The term "wages" has been defined in Clause (vi) of Section 2 of the Act. If any workman covered by the Act claims that wages as defined by the Act were not paid to him, or that the wages paid to him were less than what he was entitled to, his claim must be heard and decided by the Authority and not by a civil Court. It must follow that all questions which arc incidental to the relief properly claimed by a workman have to be decided by the Authority, irrespective of whether those questions are simple or complicated. The provisions of the Payment of Wages Act do not, with respect, support the conclusion that the Authority was not intended by the Legislature to decide complicated questions. Moreover it is always difficult in practice to decide which question is, and which is not, a complicated question.

12. The principle adopted in Almeda's case was in fact negatived by a decision of another Division Bench. In *Valajibhai Avcharbhai v. Chimanlal*[2] the employee had claimed over-time wages before the Authority under the Payment of Wages Act and the question which the Authority had to decide in dealing with the case was whether the establishment in which the employees were engaged was a factory , within the Factories Act or a restaurant within the Bombay Shops and Establishment Act. The Authority dismissed the employees' application, on the ground that he "was not supposed to determine complicated questions of law, or decide about the status of the workmen". The Authority's order was quashed by a Division Bench consisting of Mr. Justice J. C. Shah, and Mr. Justice Gokhale. Delivering the judgment of the Division Bench, Mr. Justice Shah said (p. 200) :The Legislature has conferred jurisdiction upon the Authority to entertain applications by employees for an order for payment of wages alleged to be unlawfully deducted or delayed; and in a claim of that character, all questions which are incidental to the determination of delayed wages or wages unlawfully deducted will, in our judgment, be within the competence of the Authority. Even if in the determination of the claim complicated questions arise, we do not think that the Authority is entitled to refuse to exercise jurisdiction...The learned Judge went on to observe:There is also no warrant for holding that the jurisdiction of the Authority is of a summary character.The learned Judge further said:.If jurisdiction be granted to decide disputed questions, it is difficult to appreciate why the Authority cannot decide what are called complicated questions. In our view, the Payment of Wages Authority is bound to decide an application for an order for payment of delayed wages or unlawfully deducted wages and cannot refuse to decide any question on the ground that it is a complicated question....

13. At about the time when the above case (ValajiWiai Awharbhai v. Chimanlal) was decided, the same Division Bench of Mr. Justice J. C. Shah and Mr. Justice Gokhale referred to a Full Bench the case of Vishwanath Tukaram v. The General Manager, C.Ry . The petitioner in that case was an employee of a railway administration. He was arrested on a criminal charge in 1949 and was eventually discharged in 1953. After he resumed his work with the railway administration in 1953, he filed an application before the Authority under the Payment of Wages Act claiming wages for the period between 1949 and 1953. The railway administration pleaded that the petitioner had been treated as absconding during the said period, that his name was automatically struck off from the attendance register, that nothing was heard about him and that, therefore, he could not be regarded as an employee of the railway administration. The employee's claim was allowed by the Authority, but was disallowed in appeal by a District Judge on the ground that the issue involved was beyond the Authority's jurisdiction. The worker filed a Writ Petition, and this petition was referred to a Full Bench by Mr. Justice J. 0, Shah and Mr. Justice Gokhale. In making the reference, the learned Judges suggested that the view taken in Almeda's case required reconsideration. At the hearing, however, the Full Bench consisting of Chagla C. J. and B. T. Desai and K. T. Desai JJ. found that the decision in Almeda's case was not required to be

reconsidered for deciding the ease referred to the Full Bench. On the merits, the Full Bench held that the Authority was competent to decide the application for delayed wages filed by the petitioner. In coming to this conclusion, the Full Bench emphasised that it was not the case of the railway administration that services of the petitioner had been terminated or that he had been dismissed. In the absence of any order of the railway administration terminating the services of the petitioner, the dispute between the parties was whether the petitioner was or was not in the employment of the railway administration during the relevant period. The Full Bench held that this dispute was directly within the jurisdiction of the Authority. Before dealing with the facts of the case, the Full Bench reviewed all the previous authorities and observed with reference to Almeda's case that it was rightly decided. In view of the fact that the Full Bench came to the conclusion that the Authority in the case before them had jurisdiction to decide the employee's claim, the observations made by the Full Bench in regard to Almeda's case were clearly obiter.

14. The decision of the Full Bench in Vislwanath Tukaram's case left unresolved the conflict in principle between Almeda's case and Valajibhai's case. This led to the curious result that an Authority under the Payment of Wages Act was held to have jurisdiction to decide all complicated questions which were incidental to a workman's claim, except the supposed complicated question as to which of the two rival contracts alleged by the parties subsisted between them. This is well illustrated by *Jerry Sabasiien Pareira v. Badshall*[3] decided by Mr. Justice S. M. Shah and Mr. Justice Naik. A workman in that case had claimed delayed wages for a certain period which, according to him, was covered by an illegal lock-out by the employer. The employer pleaded that the workman was not entitled to any wages because during the relevant period he was engaged in an illegal strike. The Authority under the Payment of Wages Act held that it had no jurisdiction to determine the question as to whether there was an illegal strike or an illegal lock-out in the concern. This view of the Authority was disapproved by the Division Bench, which held that the Authority was competent to try and decide the question. The Division Bench relied in support on Valajibhai's case. Thus while Almeda's case prevented the Authority under the Payment of Wages Act from deciding a less complicated question as to which of two alleged contracts subsisted between the parties, it was permissible to the Authority to decide the much more complicated question as to whether the suspension of work in an undertaking was duo to an illegal lock-out or an illegal strike.

15. We will next refer to the decision of the Supreme Court in *Amlica Mills v. 8. B. Bhatt*[4] The case related to the wages claimed by certain workmen in a textile mill at Ahmedabacl who were designated as bleach-folders. The bleach-folders claimed that they were doing the work of cut-lookers and that they were entitled to be paid under a certain agreement, whereas the employer contended that they were operatives governed by a certain award and that their wages were payable under the terms of the award. The Supreme Court held that it was within the jurisdiction

of the Authority under the Payment of Wages Act to decide whether the workmen's wages were to be paid under the terms of the agreement as alleged by them or under the terms of the award as contended by the employer. In its judgment the Supreme Court referred to certain provisions of the Payment of Wages Act including Sections 15 and 22, and observed that the jurisdiction of the Authority under the Act was limited by Section 15 but was exclusive as prescribed by Section 22. The Court then referred to the definition of wages in Section 2(vi) of the Act and proceeded to enumerate the several relevant facts which may have to be considered when a claim is made by an employee on the ground of illegal deduction from wages or delay in the payment of wages. While enumerating such relevant facts, the Court said (p. 503) .In regard to contracts of service sometimes parties may be at variance and may set up rival contracts, and in such a case, it may be necessary to enquire which contract was in existence at the relevant time.After referring to the various questions which may thus arise for the determination of the Authority, the Court went on to say-but we do not propose to consider those possible questions in the present appeal, because, in our opinion, it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the Authority and those which cannot be so considered. We propose to confine our decision to the facts in the present case.In a later part of the judgment the Supreme Court distinguished Almeda's case from the case before them. The Supreme Court pointed out that in Almeda's case "two rival contracts were pleaded by the parties, according to whom only one contract was subsisting and not the other, and so the question for decision was which contract was really subsisting." According to the Supreme Court the point in dispute in the case before them was substantially different, because in that case both the contracts were admittedly subsisting and the dispute between the parties was whether the workmen fell into the category to which the one or the other contract applied. On this ground the Supreme Court stated that they did not propose to express any opinion about the correctness of the view taken in Almeda's case. While dealing, however, with the merits of the case before them, the Supreme Court made an observation which showed that the Court did not accept the principle on which the decision in Almeda's case was founded. The Supreme Court observed (p. 503) :If a contract of employment is admitted and there is a dispute about the construction of its terms, that obviously falls within Section 15 of the Act. If that is so, what is the difference in principle where a contract is admitted, its terms are not in dispute, and the only point in dispute is which of the two subsisting contracts applies to the particular employee in question.There can similarly be no difference in principle between a case in which the dispute is with regard to which of two subsisting contracts applies to a particular employee (Amlica Mitts' case) and a case in which the dispute is with regard to which of the two rival contracts subsists between the parties (Almeda's case).

16. After the decision of the Supreme Court in Ambica Mitts' case, a question whether Almcda's case was rightly decided was raised before this Court in two cases. In *Laxman Balu Telang v.*

B.D. Rathi[5] decided by Patel and Chandrachud, JJ., on July 21, 1961 (Unrep.) and in A. Rakim v. Shiraj Kasim decided by Patel and Nain JJ. doubts were expressed about the correctness of the view taken in Almeda's case. In both the cases, however, the Court did not find it necessary to decide that question.

17. We have noticed above that the principle on which the Supreme Court proceeded to decide the Ambica Mills' case was at variance with the principle adopted by this Court in Almeda's case. In Ambica Mills' case, however, the Supreme Court refrained from expressing' any definite opinion on whether the view taken in Almeda's case was correct. Under the circumstances, it would have been proper for us to refer to a Full Bench the question whether the decision in Almeda's case is good law. Such a reference, however, is not necessary in view of an amendment in Sub-section (7) of Section 15 of the Payment of Wages Act brought about by Central Act 53 of 1954. The amendment was subsequent to the decision of the Supreme Court in Ainbica Mills' case and its effect, in our view, is to give legislative sanction to the principle laid down in Valajibhai's ease as against the principle adopted in Almeda's case.

18. Prior to the amendment, the Authority under the Payment of Wages Act had jurisdiction under Section 15(7) "to hear and decide for any specified area all claims arising' out of deductions from the wages, or delay in payment of wages, of persons employed or paid in that area." The amendment added the words "including all matters incidental to such claims". The amendment makes it clear that if any matter is incidental to a claim arising out of deductions from wages or delay in the payment of wages, that matter can be heard and decided by the Authority. When an employee claims wages on the basis of one contract and the employer denies the subsistence of that contract and contends that the employee is liable to be paid under another contract, the question as to which of the two alleged contracts subsists between the parties is clearly "incidental" to the employee's claim. It is thus not permissible to hold, after the amendment, that it is beyond the competence of the Authority to decide which of two rival contracts subsists between the employer and the employee. The decision in Almeda's case, therefore, is no longer good law.

19. It will be recalled that in its judgment in Ambica Mills' case the Supreme Court gave instances of various incidental facts which may have to be considered by the Authority under the Payment of Wages Act and the Supreme Court then went on to say that it would be inexpedient to lay down any hard and fast rule "which would afford a determing test to demarcate the field of incidental facts which can be legitimately considered by the Authority and those, which cannot be so considered." Thus the decision of the Supreme Court left room for the view that the Authority may be incompetent to decide some matters, even if they are incidental to a claim legitimately made by an employee. The legislative amendment, by providing that "all" matters

which are incidental to such a claim can be heard and decided by the Authority, left no room for that view.

20. It is hardly necessary to add that the amendment is confined to such incidental matters as arise in deciding a claim which an employee is entitled to make under the Act. Under the Act an employee is entitled to claim actual as distinguished from potential wages. The Authority has no jurisdiction to upgrade an employee from one category into another and an employee cannot, therefore, approach the Authority for the recovery of wages which would be clue to him if he were placed in a higher category (D'Costa v. Patel). Similarly an employee who is dismissed from service, and who is not entitled to wages till the order of dismissal is set aside, cannot approach the Authority for the recovery of wages which would be due to him if he was reinstated in service. Where, however, an employee applies for the recovery of actual wages, all matters incidental to his claim, however complicated they may be, have to be heard and decided by the Authority.

21. On behalf of the first respondent Mr. J. I. Mehta pointed out that the amendment to Sub-section (7) of Section 15 came into force on 1st February, 1965, whereas the applications of the first petitioner and the fourteen other employees were filed before the Authority earlier on 11th January 1965. Mr. Mehta argued that the jurisdiction of the Authority to decide these applications must, therefore, be determined according to the law which obtained prior to the amendment. We cannot accept this contention. Where the jurisdiction of a Tribunal is enlarged during the pendency of a proceeding, it is the amended law which determines the competence of the Tribunal to deal with the proceedings and not the law as it stood when the proceedings commenced (Vclayudtum v. S.K. Bedekar).

22. In the result the impugned order of the Authority is set aside, the applications filed by the first petitioner and the fourteen other workmen are restored and the Authority is directed to hear and dispose of the applications in accordance with law. The first respondent to pay the petitioner's costs quantified at Rs. 500. Order set aside.

Cases Referred.

1[1964] 1 L.L.J. 19
2(1957) 59 Bom. L.R. 19
3[1960] 2 L.L.J. 99
4(1900) 63 Bom. L.R. 497, S C
5(1961) Special Civil Application No. 326 of 1961